

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4291 OF 2005

Pundlik s/o. Chingalaba Kaje : Petitioner
V/s.

The State of Maharashtra & Ors. : Respondents

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Mr.Y.S.Jahagirdar, Senior Advocate, with Mr.P.B.Shirsat
and Mr.Ashish Gaikwad for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader for the respondent
nos.1, 2, 4 & 5.

Mr.R. Yadav for the respondent no.3.

Mr.Sanjay B. Gholve with Mr.R.T.Nagargaje for the
respondent no.6.

Dr.V.K.Choudhari with Mr.Sameer A. Kumbhakoni for the
respondent no.7.

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CORAM : S.A. BOBDE, J.

July 13, 2005.

ORAL ORDER :

1. Rule, returnable forthwith.

The learned counsel for the respective respondents
waive service of rule.

Heard by consent.

2. The petitioner has challenged the order of the Collector dated 28.6.2005 refusing to include the petitioner's name in the list of voters. This order is passed in the course of election to the Maharashtra Rajya Sahakari Doodh Mahasangh Maryadit of which the petitioner claims to be a representative i.e. The Aurangabad Zilla Sahakari Doodh Utpadak Sangh Ltd., as an voter.

3. Briefly, the facts are that The Aurangabad Zilla Sahakari Doodh Utpadak Sangh Ltd., hereinafter referred to as the "Zilla Sangh", is a member of an apex society i.e. the Maharashtra Rajya Sahakari Doodh Mahasangh Maryadit. Elections to the Managing Committee in the year 2005 are to be held. The Zilla Sangh being a society can only cast its vote through a representative nominated in accordance with the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971, hereinafter referred to as the "Rules". The voters' list contains names of the society as a voter as also the name of the representative.

4. On 15.4.2005, a Resolution was passed in favour of one Vilas Chavan, the respondent no.7, authorising him to act as their representative. Thereafter, another resolution dated 24.5.2005 was passed in his favour for the same

purpose. Then, on 9.6.2005 came the Resolution in dispute. Apparently, the Zilla Sangh changed its representative. Instead of Vilas Chavan, it purported to nominate the petitioner Pundalik Kaje as their representative. They communicated the name to the Collector. The Collector sought the opinion from the Deputy Registrar, Co-operative Societies, Aurangabad and Mumbai. After obtaining their opinion, he passed the order which is impugned in this Writ Petition. He observed that there was no subject as regards the change of representative or delegate and in spite of that, according to him, the name of the delegate has been changed in the meeting dated 9.6.2005. He, therefore, rejected the petitioner's request for being included as a delegate entitled to cast his vote.

5. Mr. Jahagirdar, learned counsel for the petitioner, submitted that having regard to the scheme of the Rules, in particular rule 5, a society is entitled to change the name of its delegate earlier than seven days prior to the last date appointed by the Collector under rule 16 for making nomination. It was submitted by the learned counsel that the Collector is bound to take cognizance of this change since the change is being made much earlier than seven days before the last date for making

nominations. In fact, the election programme cannot be declared under rule 16 prior to 27.7.2005. This, according to the learned counsel, is in view of the fact that rule 16 of the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971 requires the District Deputy Registrar to draw election programme "not earlier than thirty days of the date of display of the final list of voters of a society under rule 7." According to the learned counsel, since the final list of voters has been published on 27.6.2005, the stages of elections under rule 16 cannot be announced before 27.7.2005. The thrust of the submission is, therefore, that the Collector is under an obligation to consider a the change in the name of the delegate. There is sufficient time to do so and the acceptance of the change would be in accordance with rule 5 as interpreted by this Court in a judgement dated 2.5.2001 in Shri Suresh Ramchandra Palande v. Shri Balasaheb Manik Farate (Letters Patent Appeal no.175 of 1997). Therefore, according to the learned counsel, mandamus must issue directing the Collector to consider the change of name.

6. Mr.Jahagirdar, the learned counsel for the petitioner, relied on the observations of the Supreme Court for this purpose in Union of India v. S.B. Vohra ((2004) 2 S.C.C.

150] wherein their Lordships have reproduced the observations from an earlier decision, vide para 25, as follows:-

"In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion".

The observations are not in relation to an electoral process already commenced.

7. Dr.Choudhari, learned counsel for the respondent no.7, on the other hand, relied on a decision of the Supreme

Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 S.C.C. 509], in which the Supreme Court held vide para 12 as follows:-

"In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

In this decision, their Lordships have exhaustively construed the Rules.

8. Now, in this case, there is no doubt that though the programme under rule 16 has not been announced the preparation of electoral rolls has been announced as early as on 30.5.2005, there is no dispute about this. Clearly, therefore, the elections are at an intermediate stage. Moreover, it is clear that the petitioner has a remedy for challenging the election on ground enumerated in rule 81 of the Election Rules, in particular 81(d) which reads as follows:-

"81. Grounds for declaring election to be void.-- If the Commissioner is of opinion--

(a)

(b)

(c)

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected--

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his Election Agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Act or any rule made thereunder,

the Commissioner shall declare the election of the returned candidate to be void."

9. In this view of the matter and having regard to the ratio of the judgment of the Supreme Court in Sant Sadguru's case (supra), I am of view that this Court ought not to entertain the petition at this stage.

10. Mr. Jahagirdar, learned counsel for the petitioner, persisted in his plea and relied upon the decision of the Supreme Court in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra (A.I.R. 2004 S.C. 1329) in

which the Supreme Court upheld the direction of this Court for inclusion of the name of the respondent in the electoral rolls even though such a direction was given in the process of preparation of the electoral rolls which was held to be an intermediate stage of the process of election. Their Lordships did not rely on the judgement in Sant Sadguri's case (supra) since the voters list in that case was found to have been prepared on the basis of non-existent rules. Their Lordships distinguished the judgement in Sant Sadguri's case in the following words:-

"4. In Sant Sadguru Janardan Swami (supra) this Court made the aforementioned observations keeping in view the fact therein the voters's list was prepared in terms of the extant rules but certain irregularities were committed therein but where voters list has been prepared on the basis of non-existent rules the same would be illegal."

and proceeded to observe that the electoral rolls was prepared on the basis of an illegal amendment of the bye-laws. The present case is very different from the case before their Lordships in Ahmednagar Zilla S.D.V.& P.

Sangh Ltd.'s case (supra).

11. In this view of the matter, I am not inclined to interfere with the impugned order. The petitioner may take such appropriate steps as are available to him, in accordance with law.

12. The Writ Petition is, therefore, dismissed. The rule stands discharged.

Sd/-

(S.A. Bobde, J.)